

**TITLE 23. WATERS
DIVISION 3. STATE WATER RESOURCES CONTROL BOARD AND
REGIONAL WATER QUALITY CONTROL BOARDS**

Notice of Proposed Regulatory Action

**CHAPTER 18. PETROLEUM UNDERGROUND STORAGE TANK
CLEANUP FUND**

**ARTICLE 7. UNDERGROUND STORAGE TANK
PETROLEUM CONTAMINATION ORPHAN SITE CLEANUP FUND**

NOTICE IS HEREBY GIVEN that the State Water Resources Control Board (State Water Board) proposes to repeal, in part, and adopt, in part, the regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

Proposed Regulatory Action

The State Water Board proposes to repeal existing California Code of Regulations, title 23, division 3, chapter 18, article 7, section 2814.20 et seq., because Health and Safety Code section 25299.50.2, relating to the Underground Storage Tank Petroleum Contamination Orphan Site Cleanup Account (OSCA), was repealed effective January 1, 2008. The State Water Board further proposes to adopt proposed California Code of Regulations, title 23, division 3, chapter 18, article 7, section 2814.20 et seq., relating to the Underground Storage Tank Petroleum Contamination Orphan Site Cleanup Fund (Orphan Site Cleanup Fund), which was established by Health and Safety Code section 25299.50.2, as effective on January 1, 2009.

Public Hearing

A public hearing has not been scheduled for this proposed action. However, as provided in Government Code section 11346.8, any interested person, or his or her duly authorized representative, may request a public hearing if the request is submitted in writing in the manner described below to the State Water Board no later than 15 days prior to the close of the written comment period. If a request for a public hearing is made, the State Water Board shall, to the extent practicable, provide notice of the time, date, and place of the hearing in accordance with Government Code section 11346.4 by mailing the notice to every person who has filed a request for notice with the State Water Board. In addition, as prescribed by Government Code section 11340.85, notice may be provided by means of electronic communication to those persons who have expressly indicated a willingness to receive notice by this means.

Written Comment Period

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the State Water Board. The written comment period closes at 5:00 p.m. on March 30, 2009. The State Water Board will only consider comments received by that time at the addresses below.

Comments may be hand-delivered or submitted by U.S. mail, facsimile transmission, or electronic mail. Comments delivered by hand should be taken to 1001 I Street, Sacramento, CA, and addressed to the attention of Ms. Judy Reid as shown below. Comments submitted by U.S. mail should be addressed as follows:

Judy Reid, Regulations Coordinator
State Water Resources Control Board
Division of Financial Assistance
Orphan Site Cleanup Fund
P.O. Box 944212
Sacramento, CA 94244-2120

Comments submitted by facsimile should be sent to the following facsimile phone number: (916) 341-5806. Comments submitted by electronic mail should be sent to the following e-mail address: jreid@waterboards.ca.gov.

To be added to the mailing list for this rulemaking and to receive notification of updates to this rulemaking, you may subscribe to the listserve for public notices regarding the Orphan Site Cleanup Fund by going to:

www.waterboards.ca.gov/resources/email_subscriptions/swrcb_subscribe.shtml.

You may also call Ms. Judy Reid at (916) 341-5760 or email her at jreid@waterboards.ca.gov.

Authority and Reference

Health and Safety Code section 25299.77 authorizes the State Water Board to adopt, amend, or repeal regulations to implement chapter 6.75 of the Health and Safety Code. The proposed regulations implement, interpret, or make specific Health and Safety Code section 25299.50.2, as effective on January 1, 2009.

Informative Digest/Policy Statement Overview

Pursuant to Chapter 774, Statutes of 2004, \$10 million per fiscal year 2004-05, 2005-06, and 2006-07 was transferred from the Underground Storage Tank Cleanup Fund (USTCF) to the OSCA to address petroleum contamination from underground storage tanks at sites that qualify as brownfields. Effective January 1, 2008, Health and Safety Code section 25299.50.2, which established the

OSCA, was repealed. Therefore, the State Water Board proposes to repeal existing California Code of Regulations, title 23, division 3, chapter 18, article 7, section 2814.20 et seq., relating to the OSCA.

Chapter 616, Statutes of 2008 provides that \$10 million for each of the 2008-09, 2009-10, and 2010-11 fiscal years shall be transferred from the USTCF to the Orphan Site Cleanup Fund to address petroleum contamination from underground storage tanks at sites that qualify as brownfields. Under Health and Safety Code section 25299.50.2, enacted by Chapter 616, Statutes of 2008, the State Water Board is responsible for the administration of the Orphan Site Cleanup Fund. In order to implement Health and Safety Code section 25299.50.2, establishing the Orphan Site Cleanup Fund, the State Water Board proposes to adopt proposed California Code of Regulations, title 23, division 3, chapter 18, article 7, section 2814.20 et seq. The proposed regulations define eligible sites, eligible applicants, and eligible costs and establish eligibility requirements, a priority system for paying eligible applicants, and funding limitations. The proposed regulations also define the types of costs that qualify for funding.

The proposed regulations generally duplicate the regulations for the OSCA, which are being repealed. The four major differences between the regulations for the OSCA and the proposed regulations for the Orphan Site Cleanup Fund are listed below.

- Unlike the regulations for the OSCA, which restricted payment requests to requests for \$5,000 or more, the proposed regulations allow payment requests to be submitted for costs of \$500 or more.
- The regulations for the OSCA include several provisions regarding performance-based contracts for cleanup grants. Under the proposed regulations, the Orphan Site Cleanup Fund will only issue time and material cleanup grants. Therefore, provisions regarding performance-based contracts, including the definitions of “performance-based contract” and “remediation milestone” are not included in the proposed regulations.
- Similar to the regulations for the OSCA, the proposed regulations establish a monetary cap of \$1.5 million per occurrence for grants from the Orphan Site Cleanup Fund. However, the proposed regulations also provide that any grants issued and reimbursed by the State Water Board from the OSCA shall be counted toward the total amount available per occurrence from the Orphan Site Cleanup Fund.
- The provisions governing the Orphan Site Cleanup Fund’s priority list are modeled after the regulations for the OSCA. However, the State Water Board has determined that those applicants to the Orphan Site Cleanup Fund who previously applied for a grant from the OSCA and either

received a grant from the OSCA or were on the OSCA's priority list at the time that the OSCA program was repealed, should receive higher priority than other applicants to the Orphan Site Cleanup Fund. In order for the applicant to receive this higher priority, the State Water Board must receive the applicant's application on or before 45 days after the effective date of the proposed regulations.

Local Mandate

These proposals do not impose a mandate on local agencies or school districts, or a mandate which requires reimbursement pursuant to part 7 (commencing with section 17500) of the Government Code, division 4.

Costs or Savings to State Agencies

The State Water Board has determined that there is no cost or savings to state agencies as a result of the proposed regulations.

Cost or Savings Imposed on Local Agencies

The State Water Board has determined that there is no cost or savings imposed on local agencies as a result of the proposed regulations.

Cost or Savings in Federal Funding to the State

The State Water Board has determined that there is no cost or savings in federal funding to the state as a result of the proposed regulations.

Business Impact/Small Businesses

The State Water Board has determined that the proposed regulatory action will not have a significant, statewide adverse impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The State Water Board has determined that the proposed regulatory action does not adversely affect small businesses in that they will derive a benefit from the implementation of the regulations. Small businesses are among the applicants that will be able to receive grants from the Orphan Site Cleanup Fund.

Cost Impacts on Representative Private Persons or Businesses

The State Water Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Assessment Regarding Effect on Jobs/Businesses

The State Water Board has determined that the proposed regulatory action will have no effect on the creation or elimination of jobs within California. Nor will the proposed regulatory action have any effect on the creation of new businesses, the elimination of existing businesses, or the expansion of existing businesses doing business within California.

Effect on Housing Costs

The State Water Board has determined that the proposed regulatory action will have no effect on housing costs.

Alternatives

The State Water Board has determined that no reasonable alternative would be more effective in carrying out the purpose for which the action is proposed, or would be as effective as, and less burdensome to affected private persons than the proposed action.

Availability of Initial Statement of Reasons, Text of Proposed Regulations, and the Rulemaking File

The State Water Board has prepared an Initial Statement of Reasons for the proposed action. The statement includes the specific purpose for the regulations proposed for adoption and the rational for the State Water Board's determination that adoption is reasonably necessary to carry out the purpose for which the regulations are proposed. All the information upon which the proposed regulations are based is contained in the rulemaking file. The Initial Statement of Reasons, the express terms of the proposed regulations, and the rulemaking file are available from the contact person listed below or at the website listed below.

Availability of Changed or Modified Text

After holding any hearing that is requested and considering all timely and relevant comments received, the State Water Board may adopt the regulatory language as originally proposed, or with nonsubstantial or grammatical modifications. If the State Water Board makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for written comment at least 15 days before the State Water Board adopts the regulations as modified.

Availability and Final Statement of Reasons

Upon its completion, a copy of the Final Statement of Reasons will be available from the contact person listed below or at the website listed below.

Contact Persons

Requests for copies of the text of the proposed regulations, the Statement of Reasons, or other information upon which the rulemaking is based, or other inquiries, should be addressed to the following:

Name: Judy Reid
Address: State Water Resources Control Board
Orphan Site Cleanup Fund
1001 "I" Street
Sacramento CA 95814
Telephone No.: (916) 341-5760
Fax No.: (916) 341-5806
E-mail address: jreid@waterboards.ca.gov

The backup contact person is:

Name: Wendy Westerman
Address: State Water Resources Control Board
Orphan Site Cleanup Fund
1001 "I" Street
Sacramento, CA 95814
Telephone No.: (916) 341-5794
Fax No.: (916) 341-5806
E-mail Address: wwesterman@waterboards.ca.gov

The documents relating to this proposed action also may be found on the State Water Board's website at the following address:

www.waterboards.ca.gov/water_issues/programs/ustcf/oscf.shtml.